

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

JUL 31 1993

RUSSELL A. GRANTHAM, Trustee of
the Fee Liquidating Trust,

Plaintiff,

v.

THE J.L. MASON GROUP, et al.

Defendants.

U. S. DISTRICT COURT
E. DISTRICT OF MO.

No. 80-359 C (4)

JUDGMENT

In accordance with the Memorandum filed herewith,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, as soon as practicable after the period of time has passed for any timely appeal of this order, the Clerk of this Court shall, if no notice of appeal has been filed, take all reasonable measures to pay out the residual monies, as described in the Memorandum filed herewith and pursuant to further order, as follows:

(a) American Red Cross for flood relief in the St. Louis metropolitan area--25% of the residual fund;

(b) Salvation Army for flood relief in the St. Louis metropolitan area--25% of the residual fund;

(c) The Christian Service Center, Inc., P.O. Box 207, St. Louis, Missouri 63166--12.5% of the residual fund;

(d) Community in Partnership Family Center, 10740 Page Blvd., St. Louis, Missouri 63132--12.5% of the residual fund;

(e) Legal Services of Eastern Missouri--12.5% of the residual fund; and

A TRUE COPY OF THE ORIGINAL
JAMES G. WOODWARD, CLERK
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

BY:

Steven Boyd
DEPUTY CLERK

(108)

(f) Habitat for Humanity International for housing in the St. Louis metropolitan area--12.5% of the residual fund.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk of the Court maintain in the Court's registry the sum of \$4,587.85 with which to pay the claims represented by the thirteen issued but uncashed refund checks. After the passage of five years after March 3, 1993, the Clerk shall pay to the Treasury of the United States under 28 U.S.C. §2042 whatever then remains of the \$4,587.85.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction to resolve any further matter that arises in this action.

IT IS HEREBY CERTIFIED that there is no just reason for delay in the entering of this Judgment as a final, appealable judgment.


UNITED STATES MAGISTRATE JUDGE

Signed this 31st day of July, 1993.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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the Fee Liquidating Trust,

Plaintiff,

v.

THE J.L. MASON GROUP, et al.

Defendants.

**U. S. DISTRICT COURT
E. DISTRICT OF MO.**

No. 80-359 C (4)

MEMORANDUM

This class action is before the Court for a determination of the disposition of the residual funds which remain in the registry of the Court following the appropriate payment of all claims and the expenses of administering the action, including the fees of counsel and the court-appointed experts. All pretrial matters were referred to the undersigned United States Magistrate Judge under 28 U.S.C. § 636(c)(3). A hearing was held on this matter on July 23, 1993.

This class action originally was brought by plaintiff in 1980, for the recovery of federal taxes paid by Fee Fee Trunk Sewer, Inc. ("Fee Fee"). The jurisdictional basis for the action was 28 U.S.C. § 1346(a)(1). On August 12, 1982, the Court entered partial summary judgment against the United States on the issue of the taxability of the connection fees. This order determined that the plaintiff, the Trustee for the Fee Fee Liquidating Trust, was entitled to a refund of taxes from the federal government. Ultimately, this amount was determined to be \$3,072,424.63, as

principal and accrued interest. Plaintiff deposited those funds, plus related tax refund monies later recovered from the State of Missouri, with this Court and the refund monies were invested to earn interest.

Thereafter, plaintiff filed a First Amended Complaint For Interpleader and Declaratory Judgment. This pleading sought to determine the appropriate recipients of the refunded monies. Ultimately, the Court approved three classes of claimants and appointed counsel to represent the classes. Plaintiff, having performed the task of obtaining the refunds, was dismissed from the action.

Over several years the Court appointed experts to aid the Court, the class representatives and their counsel in investigating and specifically identifying the parcels of property on which the connection fees were paid and the identities of the class members. Approximately 4500 parcels of real property and many potential claimants were identified.

After much adversarial negotiation, the class representatives and counsel reached a settlement agreement which provided an equitable, multi-factor formula for dividing the fund among the class members who made claims. As to any residual fund the settlement agreement, as set forth in the published notices, also provided:

After settlement payments have been made to class members for settlement under the various categories and after all administrative costs, attorneys' fees and expenses have been paid out, the remaining funds, if any, shall be paid out to an entity

which relates to utility service and/or governmental services and/or which provides a critical service to disadvantaged Missouri citizens in the St. Louis Metropolitan Area, as directed by Order of the Court.

Following a fairness hearing on February 12, 1992, the Court gave final approval to the settlement agreement. No class member voiced any objection to the basic settlement formula. The only disputes were by competing claimants for specific refunds on specific properties. After several hearings and rulings, these disputes were resolved. No appeal has been made from any order resolving such a dispute.

On January 26, 1993, the Court entered its final judgment approving the settlement agreement under Federal Rule of Civil Procedure 23(e), ordering the payment of the refund claims pursuant to the settlement agreement after the passage of the time for filing a notice of appeal. No notice of appeal has been filed.

After the automation of the claim payment process, the Clerk of the Court began issuing the claim payment checks on March 3, 1993. To date, 3,698 checks have been issued, representing the disbursement of \$2,823,249.33 to claimants.

To this date, thirteen checks have not been cashed, representing \$4,587.85. With the concurrence of class counsel, the Court has ordered the payment of claims which were filed after the originally determined deadline for the filing of claims. With this precedent, the Court with the concurrence of class counsel has determined to preserve \$4,587.85 in the registry of the Court for the payment of the outstanding checks or for the issuance and

payment of replacement checks for these claims. After the passage of five years after March 3, 1993, the date the Clerk issued the claimants' checks, whatever of these monies have not been paid out will be paid to the Treasury of the United States under 28 U.S.C. §2042.

After the final payment of all as yet uncompensated fees and expenses, and not including the \$4,587.85 for unpaid checks, the Court will dispose of the remainder of the monies deposited with the Court. The Court retains jurisdiction to issue appropriate orders for the administration of the fund until all of the fund monies are distributed. Beecher v. Able, 575 F.2d 1010, 1016 (2nd Cir. 1978); Zients v. Lamorte, 459 F.2d 628, 630 (2nd Cir. 1972); In re Agent Orange Product Liability Litigation, 611 F.2d 1396, 1402 (E.D.N.Y. 1985). Absent an abuse of discretion, the Court's determination as to how the residual fund is to be distributed is final and binding. In re Equity Funding Corp. of America Securities Litigation, 603 F.2d 1353, 1362, 1365 (9th Cir. 1979).

The touchstone for the Court in determining the disposition of the residual funds is the settling parties' intended disposition. In re Agent Orange Product Liability Litigation, 611 F.Supp. 1396, 1403 (E.D.N.Y. 1985); In re Folding Carton Antitrust Litigation, 557 F.Supp. 1091, 1108-09 (N.D.Ill. 1983), aff'd in pertinent part, 744 F.2d 1252, 1254 (7th Cir. 1984), cert. dismissed, 106 S.Ct. 11 (1985).

There is not any doubt about the settling parties intention in this case, because the settlement agreement identified the intended recipient(s) of the residual fund, i.e., an entity or entities which provide utility or critical services to disadvantaged Missouri citizens in the St. Louis metropolitan area. The settling parties left the determination to the sole discretion of the Court.

Counsel and the Court have discussed various potential recipients for the residual fund. This matter was taken up at the hearing held on July 23, 1993. The Court has determined, for the reasons stated herein, to order distribution of the residual fund as follows:

(a) American Red Cross for flood relief in the St. Louis metropolitan area--25% of the residual fund. The Court takes judicial notice of the fact that during this period of river flooding in the mid-Western United States the American Red Cross is providing necessary relief to individual flood victims in the St. Louis metropolitan area.

(b) Salvation Army for flood relief in the St. Louis metropolitan area--25% of the residual fund. Similarly, the Court takes judicial notice of the fact that in this period of river flooding in the mid-Western United States the Salvation Army is providing necessary relief to individual flood victims in the St. Louis metropolitan area.

(c) The Christian Service Center, Inc., P.O. Box 207, St. Louis, Missouri 63166--12.5% of the residual fund. The

Christian Service Center was established in 1975 to serve children in the now defunct Vaughn Apartment project. It now helps the homeless and impoverished in the St. Louis area. The Center operates a 24-hour emergency shelter in St. Louis, offering security, food, and counseling for homeless women and children, recreational activities for neighborhood youths, and social service programs to assist the poor.

(d) Community in Partnership Family Center, 10740 Page Blvd., St. Louis, Missouri 63132--12.5% of the residual fund. The Community in Partnership Family Center is part of The Salvation Army. The Center serves St. Louis County homeless families. Currently it has a fifty bed facility. Homeless families reside there for two months and receive intensive treatment services. Upon completion of the program, approximately 60% of the families move into permanent or transitional housing. In 1992, the Center served 129 families of 393 persons. It provided these families with counseling, life skill training, career planning, advocacy, and networking with community services. The Center coordinated the volunteer services of approximately 1,300 persons in this effort. The Center is staffed and open 24 hours a day, 365 days a year.

(e) Legal Services of Eastern Missouri--12.5% of the residual fund. Legal Services of Eastern Missouri ("LSEM") is a non-profit corporation which serves disadvantaged persons in the metropolitan St. Louis area by providing legal advice regarding food, shelter, clothing, and employment. In 1992, LSEM provided services to over 19,000 persons.

(f) Habitat for Humanity International for housing in the St. Louis metropolitan area--12.5% of the residual fund. Habitat for Humanity International was founded in 1976 to build and rehabilitate homes, through volunteer labor, management expertise, and donations of money and materials. Families are selected to receive Habitat houses and these families invest hours of effort in the construction or rehabilitation of their homes. The families then pay for the homes in small monthly mortgage payments, including taxes and insurance, over a period of years. Such homes have been built in the College Hill area of North St. Louis, the Forest Park Southeast area of South St. Louis, Wellston, and Meacham Park.

The Court herewith enters a final, appealable Judgment on the issues determined herein. However, the Court will order the Clerk to pay out these monies only after the passage of the prescribed period for the appeal of the said Judgment. There is no just reason for delay in the entering of this final, appealable Judgment so that the payment of these monies may be made as soon as practicable after all the costs, expenses, and fees of the administration of this action are paid and the passage of time for the filing of a notice of appeal has passed.


UNITED STATES MAGISTRATE JUDGE

Signed this 51st day of July, 1993.